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Martha A. Estill

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1870.—Ordered to be printed.

Mr. SCOTT made the following

REPORT.

[To accompany joint resolution S. R. No. 115.]

The Committee on Claims, to whom were referred the petitions of Martha A. Estill, administratrix of J. M. Estill, deceased, praying payment for beef furnished the United States Indian commissions, of California, in 1851-'2; of Joseph Barton and General H. S. Burton, asking for payment of the claim of Pablo de la Toba for cattle supplied to the same commissioners; and of Redick McKee, one of said commissioners, asking to be refunded certain moneys paid out by him as delivering agent for the Indian department, and also additional compensation as such agent, respectfully report as follows:

On the 15th October, 1850, Redick McKee, G. W. Barbour, and O. M. Wozencroft were appointed commissioners to hold treaties with various Indian tribes in the State of California, as provided in the act of Congress approved September 30, 1850.

Redick McKee was also charged with the duties of disbursing agent of the commission, and \$25,000, the amount of the appropriation made by said act, was placed in his hands.

On the 12th April, 1851, the Commissioner of Indian Affairs wrote to these commissioners that the act approved 27th February, 1851, had terminated their functions as commissioners; that henceforth they were to act under their former instructions, as agents of the department.

That act provided that "no officer or agent so employed shall receive any additional compensation for such service." An act of 28th September, 1850, had fixed the compensation of agents at \$3,000 per annum.

On the 22d May, 1851, the Commissioner of Indian Affairs (Lea) addressed a communication to the agents informing them that the appropriation of \$75,000 asked for had been reduced to \$25,000; and on 27th June following, another communication, saying, "You will have perceived that though \$75,000 were estimated and asked for the service in which you are engaged, Congress appropriated only \$25,000, the amount remitted you on 25th instant, which, with the \$25,000 heretofore placed in your hands, is all that is applicable to the negotiation of treaties in California, and when the funds referred to have been exhausted, you will close negotiations and proceed with the discharge of your duties as agents simply, as the department could not feel itself justified in acknowledging anticipated expenditures beyond the amount of the appropriation made by Congress."

In a letter of 10th July, 1851, to J. Butler King, (Sen. Doc. 4, 1853, p. 119,) Mr. McKee shows that he was aware the appropriation was but

\$25,000, and on 29th July he acknowledged receipt of letter of 22d May, 1851.

With these instructions, debts were contracted by the commissioners or agents beyond the amount of the appropriations, which, up to 17th February, 1852, were reported as amounting to \$32,069 79, among which were the claims of J. M. Estill for \$3,000, for a quantity of fresh beef, and the claim of Don Pablo de la Toba for 201 head of cattle; \$8,040. (See Sen. Doc. 4, 348.)

It is clear that under the instructions above quoted, these debts were contracted without authority of law, although those of Estill and de la Toba it does appear were contracted by the agent in good faith *before* receipt of the instructions, and before he was aware of the reduction of the appropriation. The government has recognized the propriety of the action of the agents under the circumstances by paying the other claims; and these claims having been referred to the Department of the Interior for examination, reports have several times been made placing them upon the same ground as those which have been paid, leaving open, however, one question, viz., whether the supplies claimed for were actually issued, and stating that there is no evidence in possession of this office of the issue of these supplies other than what is detailed by the commissioner in various treaty proceedings published. (Sen. Doc. 4, Spl. Ses., 1853, and affidavit of General Brule filed with the papers.)

This affidavit and the statement of the commissioner, Colonel McKee, show that these supplies were used for the government, and it would seem just and equitable that they should be paid.

Redick McKee, agent and disbursing officer, claims \$7,424 59, \$4,754 52 of that sum being for money alleged to have been paid by him for boarding bills, traveling and other expenses, &c. incurred in the execution of his duties, from January, 1851, to October, 1853; and \$2,670 27 commission for disbursement of the funds placed in his hands.

In April, 1865, an examination of his accounts resulted in a balance in his favor of \$2,224, which was paid to him; and in that settlement items amounting to the sum above mentioned (\$7,424 59) were suspended or disallowed the commissions, because the department had no authority to allow them; the act of 27th February, 1851, indeed prohibiting such allowance, and the other claims for lack of vouchers, because the expenses charged were for personal expenses when not engaged in the Indian service, and for other reasons set forth in a "settlement of differences," made 4th August, 1865. For payment of the amounts thus disallowed, Colonel McKee appealed to Congress by petition, which has for some time been before the Committees on Indian Affairs and Claims.

Reports made successively by Commissioners of Indian Affairs—W. F. Dole, in May, 1865, D. N. Cooley, in March, 1866, and acting Commissioner Mix, in June, 1868—all treat these claims as just and equitable, notwithstanding the reasons for which they were suspended or disallowed, the last report even going further and recommending that \$1,500 be allowed to petitioner for his expenses in coming from and returning to California, in prosecution of this claim. This report, however, treats the claim for the disallowed and suspended items as one which should only be allowed on additional evidence. No additional evidence has been submitted to the committee, and it is but just to say that the nature of many of the items is such as to render it difficult to procure evidence, and that in adjusting them the circumstances and

practice of the department in similar cases should be considered, and such allowance made as is just and equitable.

The disbursement of the money being a duty superadded to those of an agent before the passage of the act forbidding additional compensation, and devolving responsibility for which bond and security were given, the commissioner's claim does not seem unreasonable, and we recommend the payment of the commission of five per cent. on \$53,405, disbursed by him, less \$4,525 70 of it, which appears to have been his own salary. \$53,405

4,525.

48,880 = \$2,444.

As it appears to have been the custom of the department to allow expenses such as are claimed by Colonel McKee, as he is admitted to have discharged his duties satisfactorily and with fidelity, and as those associated with him have been paid similar expenses, the committee recommend that the Secretary of the Interior be requested to re-examine the account for expenses, &c., and to allow whatever amount of the same, not exceeding the amount claimed in his petition, as shall, under the circumstances, appear to be just and equitable.* We herewith submit a joint resolution, in accordance with the recommendations of this report.

* The petitioner also claims interest, and now asks to add to his demand his traveling expenses, &c., named in presenting the claim. The department having found enough in the accounts as at first presented to suspend or disallow them, we do not think the government should be held for interest; and we are entirely unwilling to set the precedent of allowing to any claimant his expenses incurred in prosecuting his claims before Congress.